



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE ROOM 411

BOSTON MASSACHUSETTS 02108

(617) 727-8352

(800) 462-OCPF

MICHAEL J. SULLIVAN  
DIRECTOR

March 4, 1996  
AO-96-09

Bob McDermott  
17 Meadow Lane  
Mansfield, MA 02048

Re: Indirect solicitation of political contributions by public employees

Dear Mr. McDermott:

This letter is in response to your February 22, 1996 request for an advisory opinion.

You have stated that you are a state employee. You play part-time in a band called "Crossroads." Another member of the band, whom you have called "Dave Smith" is employed by the state as a probation officer. Another individual who is not a member of Crossroads, but who is also a public employee, whom you have called "John Doe," sings and plays guitar and will perform solo.

You are planning to perform at a fund raising event for Plymouth County District Attorney Michael Sullivan. The event is tentatively scheduled for March 22. You have stated that each of the public employees is from the area where the event will take place, and you would like to print the names on the invitation since the participation of yourself, Dave Smith and John Doe may encourage more people to attend.

You have asked if the event may be advertised as follows:

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The Committee to Elect D.A. Michael J. Sullivan  
invites you to attend an evening of fun,  
entertainment, and dancing featuring

D.J. Johnny Yackman  
Comedy by Bubba Seiby  
John Doe  
and

The Band Crossroads featuring  
Dave Smith, Bob McDermott, Matt Putnam, Craig Carter

Donation \$25.00 per person  
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We have verbally advised you to not include the names of the public employees in the invitation. This opinion is issued to confirm that advice.

M.G.L. c. 55, s. 13 states, in pertinent part:

No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purposes whatever . . . [emphasis added].

Section 13 prohibits a public employee's participation in political fund-raising activities. As a public employee, you may not directly solicit or receive monies for such purposes. In addition, you also may not indirectly solicit or receive monies. The prohibition against indirect fundraising means that "what a public employee can not do directly (ask a friend for a contribution) can not be done in a 'roundabout' or indirect manner (help someone else to ask the employee's friend)." See AO-93-10 and IB-92-01.

The campaign finance law in general, and section 13 in particular, are "designed to assure the fairness of elections and the appearance of fairness in the electoral process." See Anderson v. City of Boston, 376 Mass. 178, 195 (1978). This office has advised that section 13 is designed "to prohibit activities and behavior which a public employee can not engage in directly or which would lead a reasonable person to conclude that a public employee is or may be soliciting funds for a political purpose . . . a public employee should refrain from any activity which indicates support in a material way for the fundraising efforts of a candidate or political committee." See AO-93-01 and IB-92-01. For example, the prohibition means that a public employee may not allow his name to appear on the letterhead of a fund-raising letter or be the featured speaker at a fund-raising event. See AO-84-02 and AO-90-04. In addition, the public employee's involvement in an event may not be used as a "draw" encouraging political fundraising efforts. See AO-91-25.

You have stated that Crossroads does not normally include on its announcements the fact that the band features Dave Smith, Bob McDermott, Matt Putnam and Craig Carter. We assume that the inclusion of these names would have been intended to increase the attendance at the fundraising event. Therefore, since some of these individuals are public employees, including their names on the invitation would not be consistent with section 13.

You have also stated that John Doe's name will not be listed on the invitation. Rather, it is our understanding that instead of using John Doe's name, the invitation will announce the appearance of "a local vocalist and guitarist." In

Bob McDermott  
March 4, 1996  
Page 3

AO-91-25, this office stated that although section 13 appropriately must be given a broad reading, such a reading must be balanced by an awareness that criminal statutes and statutes which implicate First Amendment rights should be narrowly construed. We note that there may be unusual instances where the name of a person participating in a political fundraising event may appear on invitations. The facts which you have provided, however, do not suggest that any exception would apply here. Therefore, we continue to advise that "John Doe" be identified as "a local vocalist and guitarist."

I have enclosed a Guide to Political Activity for State, County and Municipal Employees, which describes the restrictions on political fund-raising activities resulting from section 13's prohibition against the direct or indirect solicitation as well as other provisions of chapter 55 which restrict your fundraising activity.

This opinion has been rendered solely on the basis of representations made in your letter and conversation with the Office's General Counsel.

Please do not hesitate to contact this Office if you have additional questions regarding campaign finance matters.

Sincerely,



Michael J. Sullivan  
Director

MJS/cp  
Enclosure